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890623

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
vs.)	Case No. 890623-CA
)	
NATHANIEL LEE BELL,)	Classification Priority 2
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

This is an appeal from a Judgment, Sentence, and Commitment in the Fifth District Court of Iron County, State of Utah, following a jury trial in which the Defendant was convicted of Assault by a Prisoner, a Third-Degree Felony.

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FILED

Mary T. Nicholson

IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
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Plaintiff-Respondent,)	
)	
vs.)	Case No. 890623-CA
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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,)	
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Plaintiff-Respondent,)	
)	Case No. 890623-CA
vs.)	
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NATHANIEL LEE BELL,)	
)	
Defendant-Appellant.)	

JURISDICTION OF THE COURT OF APPEALS

The Jurisdiction of the Court of Appeals is established by 78-2a-3(2)(f), Utah Code Annotated, 1953, as amended.

NATURE OF THE PROCEEDINGS

The Defendant was convicted by jury trial on September 26, 1989, in the Fifth District Court for Iron County, State of Utah, the Honorable Cullen Y. Christensen sitting as District Judge by assignment in that court.

ISSUES PRESENTED ON APPEAL

Was there sufficient evidence to convict the Defendant of assault by a prisoner? Did the Court properly instruct the jury on the definition of reasonable doubt?

DETERMINATIVE STATUTES OR RULES

The case which is believed to be determinative in this matter is State vs. Ireland, 773 P.2d 1395 (Utah, 1989). This case is reproduced in total as the addendum to this brief.

NATURE OF THE CASE

This is an Appeal from a conviction of the Defendant in the Fifth District Court for Iron County, State of Utah, for the offense of Assault by a Prisoner, a Third-Degree Felony.

COURSE OF THE PROCEEDINGS

This is an appeal from a Judgment, Sentence, and Commitment of the Fifth District Court for Iron County, State of Utah, in which the Defendant was convicted of assault by a prisoner, a Third-Degree Felony, on October 12, 1989. The Defendant was convicted after a jury trial held on September 26, 1989.

DISPOSITION AT TRIAL COURT

The Defendant was sentenced to serve a concurrent term of zero to five years at the Utah State Prison, concurrent with a previous sentence imposed upon the Defendant. So the Court will not misunderstand, the Defendant is appealing this matter because the imposition of sentence, even though concurrent, radically affects the time in which this Defendant might be considered for parole.

STATEMENT OF FACTS

On April 13, 1989, the Defendant was incarcerated at the Iron County/Utah State Correctional Facility after having been committed at that facility by the Utah State Department of Corrections. The Defendant had previously been committed to the Utah State Prison. On that date the Defendant and three other

inmates were playing a game of handball in the gymnasium portion of the facility using the west and south walls of the gymnasium as the handball court. In the process of the game, the Defendant was struck by the alleged victim, Mr. Cary Hartman. The Defendant reacted by striking Mr. Hartman in the jaw. The blow caused Mr. Hartman to become unconscious, and he fell to the floor. When Mr. Hartman fell to the floor his head was cut. At the trial of the matter, Mr. Hartman and the Defendant testified that Mr. Hartman had no recollection of being struck. Other state inmates testified, specifically Mr. Nicolas Baughn (Banner) and Mr. Frank Mills. At the trial of the matter, the Court refused to give the Defendant's requested jury instruction No. 1, which was a definition of reasonable doubt. The Court instead gave jury instruction No. 4 in an attempt to define reasonable doubt. The Defendant took exception to the failure of the Court to instruction No. 4. (T.119)

SUMMARY OF ARGUMENT

The Court improperly instructed the jury on the definition of reasonable doubt, and there was insufficient evidence to support the Defendant in a conviction of this matter.

ARGUMENT

POINT I

THE JURY IN THIS CASE WAS IMPROPERLY INSTRUCTED AS TO THE DEFINITION OF REASONABLE DOUBT UNDER THE STANDARD OF STATE V. IRELAND, 773 P.2D 1395 (UTAH, 1989).

It is the Defendant's position that the clear import of

State vs. Ireland is that jurors need to be instructed that in order to convict a Defendant they must have an abiding conviction of the Defendant's guilt upon which they would act in the most critical and irrevocable matters in there own affairs. This position is drawn from the quotations in Justice Stewart's dissenting opinion in the Ireland case from Scurry v. United States, 347 F.2d 468 (D.C. Cir. 1965). Judge Wright, as quoted by Justice Stewart in Ireland stated:

A prudent person called upon to act in an important business or family matter would certainly gravely weigh the often neatly balanced considerations and risks tending in both directions. But, in making and acting on a judgment after so doing, such a person would not necessarily be convinced beyond a reasonable doubt that he made the right judgment. Human experience, unfortunately, is to the contrary.

Justice Stewart went to quote the Supreme Judicial Court of Massachusetts in the case of Commonwealth v. Ferreira, 373 Mass. 116, 130, 364 N.E.2d 1264 (1977), which stated:

The degree of certainty required to convict is unique to the criminal law. We do not think that people customarily make private decisions according to this standard nor may it even be possible to do so. Indeed, we suspect that were this standard mandatory in private affairs the result would be massive inertia. Individuals may often have the luxury of undoing private mistakes; a verdict of guilty is frequently irrevocable.

The clear import of the dissent of Justice Stewart regarding the reasonable doubt instruction is to place a unique and heavy burden upon the minds of the jurors in deciding reasonable doubt in a criminal case.

It is Mr. Bell's contention that the striking of language as indicated by Justice Zimmerman leaves a much weaker

definition of reasonable doubt and that the clear import of State v. Ireland demands a more stringent definition.

While it is true that the main body of the opinion written by Justice Zimmerman in Ireland simply indicates that the earlier reasonable doubt language be stricken, it is the position of this Defendant that the more stringent definition of reasonable doubt and the more stringent application of critical and irrevocable consideration need to be applied in order to properly define the jury's role in determining the existence of reasonable doubt.

POINT TWO

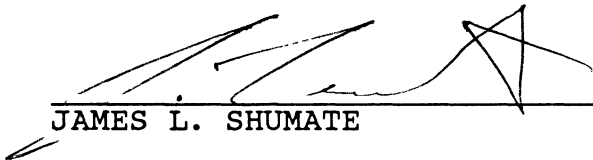
THERE WAS INSUFFICIENT CREDIBLE EVIDENCE TO SUPPORT THE CONVICTION OF THE DEFENDANT IN THIS MATTER.

The conviction of the Defendant in this matter rested upon the testimony of the victim, Mr. Cary Hartman, and two other inmates, Nicholas Baughn (Banner) and Frank Mills. The Defendant also testified, and the jury undoubtedly considered the Defendant's testimony. However, it should be pointed out that the Defendant's testimony raised a defense of self defense. It is this Defendant's position that in view of the fact that the State's evidence consisted strictly of the testimony of convicted felons, all serving prison sentences, that there was sufficient reasonable doubt in this case to support the acquittal of this Defendant. State v. Webb, 779 P.2d 1108 (Utah, 1989).

CONCLUSION

Based upon the foregoing errors at the trial court level and the fact that this Defendant has already been accorded a retrial, it is this Defendant's position that the Judgment against him should be reversed and that the case should be remanded for dismissal. State v. Webb, supra.

DATED this 12th day of January, 1990.



JAMES L. SHUMATE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing BRIEF OF APPELLANT to Mr. Paul Van Dam, Utah Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, this 12 day of January, 1990, first class postage fully prepaid.

JAMES L. SHUMATE